Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-29640 June 10, 1971

GUILLERMO AUSTRIA, petitioner,
vs.
THE COURT OF APPEALS (Second Division), PACIFICO ABAD and MARIA G. ABAD, respondents.

Antonio Enrile Inton for petitioner.

Jose A. Buendia for respondents.

REYES, J.B.L., *J.:*

Guillermo Austria petitions for the review of the decision rendered by the Court of Appeal (in CA-G.R. No. 33572-R), on the sole issue of whether in a contract of agency (consignment of goods for sale) it is necessary that there be prior conviction for robbery before the loss of the article shall exempt the consignee from liability for such loss.

In a receipt dated 30 January 1961, Maria G. Abad acknowledged having received from Guillermo Austria one (1) pendant with diamonds valued at P4,500.00, to be sold on commission basis or to be returned on demand. On 1 February 1961, however, while walking home to her residence in Mandaluyong, Rizal, Abad was said to have been accosted by two men, one of whom hit her on the face, while the other snatched her purse containing jewelry and cash, and ran away. Among the pieces of jewelry allegedly taken by the robbers was the consigned pendant. The incident became the subject of a criminal case filed in the Court of First Instance of Rizal against certain persons (Criminal Case No. 10649, People vs. Rene Garcia, et al.).

As Abad failed to return the jewelry or pay for its value notwithstanding demands, Austria brought in the Court of First Instance of Manila an action against her and her husband for recovery of the pendant or of its value, and damages. Answering the allegations of the complaint, defendants spouses set up the defense that the alleged robbery had extinguished their obligation.

After due hearing, the trial court rendered judgment for the plaintiff, and ordered defendants spouses, jointly and severally, to pay to the former the sum of P4,500.00, with legal interest thereon, plus the amount of P450.00 as reasonable attorneys' fees, and the costs. It was held that defendants failed to prove the fact of robbery, or, if indeed it was committed, that defendant Maria Abad was guilty of negligence when she went home without any companion, although it was already getting dark and she was carrying a large amount of cash and valuables on the day in question, and such negligence did not free her from liability for damages for the loss of the jewelry.

Not satisfied with his decision, the defendants went to the Court of Appeals, and there secured a reversal of the judgment. The appellate court overruling the finding of the trial court on the lack of credibility of the two defense witnesses who testified on the occurrence of the robbery, and holding that the facts of robbery and defendant Maria Abad's possesion of the pendant on that unfortunate day have been duly published, declared respondents not responsible for the loss of the jewelry on account of a fortuitous event, and relieved them from liability for damages to the owner. Plaintiff thereupon instituted the present proceeding.

It is now contended by herein petitioner that the Court of Appeals erred in finding that there was robbery in the case, although nobody has been found guilty of the supposed crime. It is petitioner's theory that for robbery to fall under the category of a fortuitous event and relieve the obligor from his obligation under a contract, pursuant to Article 1174 of the new Civil Code, there ought to be prior finding on the guilt of the persons responsible therefor. In short, that the occurrence of the robbery should be proved by a final judgment of conviction in the criminal case. To adopt a different view, petitioner argues, would be to encourage persons accountable for goods or

properties received in trust or consignment to connive with others, who would be willing to be accused in court for the robbery, in order to be absolved from civil liability for the loss or disappearance of the entrusted articles.

We find no merit in the contention of petitioner.

It is recognized in this jurisdiction that to constitute a *caso fortuito* that would exempt a person from responsibility, it is necessary that (1) the event must be independent of the human will (or rather, of the debtor's or obligor's); (2) the occurrence must render it impossible for the debtor to fulfill the obligation in a normal manner; and that (3) the obligor must be free of participation in or aggravation of the injury to the creditor. [1] A fortuitous event, therefore, can be produced by nature, e.g., earthquakes, storms, floods, etc., or by the act of man, such as war, attack by bandits, robbery, [2] etc., provided that the event has all the characteristics enumerated above.

It is not here disputed that if respondent Maria Abad were indeed the victim of robbery, and if it were really true that the pendant, which she was obliged either to sell on commission or to return to petitioner, were taken during the robbery, then the occurrence of that fortuitous event would have extinguished her liability. The point at issue in this proceeding is how the fact of robbery is to be established in order that a person may avail of the exempting provision of Article 1174 of the new Civil Code, which reads as follows:

> ART. 1174. Except in cases expressly specified by law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

It may be noted the reform that the emphasis of the provision is on the events, not on the agents or factors responsible for them. To avail of the exemption granted in the law, it is not necessary that the persons responsible for the occurrence should be found or punished; it would only be sufficient to established that the enforceable event, the robbery in this case did take place without any concurrent fault on the debtor's part, and this can be done by preponderant evidence. To require in the present action for recovery the prior conviction of the culprits in the criminal case, in order to establish the robbery as a fact, would be to demand proof beyond reasonable doubt to prove a fact in a civil case.

It is undeniable that in order to completely exonerate the debtor for reason of a fortutious event, such debtor must, in addition to the cams itself, be free of any concurrent or contributory fault or negligence. [3] This is apparent from Article 1170 of the Civil Code of the Philippines, providing that:

> ART. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

It is clear that under the circumstances prevailing at present in the City of Manila and its suburbs, with their high incidence of crimes against persons and property that renders travel after nightfall a matter to be sedulously avoided without suitable precaution and protection, the conduct of respondent Maria G. Abad, in returning alone to her house in the evening, carrying jewelry of considerable value would be negligent per se and would not exempt her from responsibility in the case of a robbery. We are not persuaded, however, that the same rule should obtain ten years previously, in 1961, when the robbery in question did take place, for at that time criminality had not by far reached the levels attained in the present day.

There is likewise no merit in petitioner's argument that to allow the fact of robbery to be recognized in the civil case before conviction is secured in the criminal action, would prejudice the latter case, or would result in inconsistency should the accused obtain an acquittal or should the criminal case be dismissed. It must be realized that a court finding that a robbery has happened would not necessarily mean that those accused in the criminal action should be found guilty of the crime; nor would a ruling that those actually accused did not commit the robbery be inconsistent with a finding that a robbery did take place. The evidence to establish these facts would not necessarily be the same.

WHEREFORE, finding no error in the decision of the Court of Appeals under review, the petition in this case is hereby dismissed with costs against the petitioner.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor and Makasiar, JJ., concur.

Castro, J., took no part.

Footnotes

> 1 Reyes & Puno, Outline of Philippine Civil Law, Vol. IV, pages 25-26, citing Lasam vs. Smith, 45 Phil. 657, 661.

2 Tolentino, Civil Code of the Philippines, Vol. IV, 1962 ed., page 117, citing 3 Salvat 83-84.

3 V. Lachica vs. Gayoso, 48 Off. Gaz. (No. 1) 205, and cases cited; Lanaso Fruit SS Co. vs. Univ. Ins. Co., 82 L. Ed. 422.

BACK TOP